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OFFICE OF PETITIONS

In re Application	:
Anderson, et al.	:
Application No. 09/688,459	:
Filed: October 13, 2000	: DECISION ON APPLICATION
Atty Docket No. 2852-C	: FOR PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION UNDER 37 CFR 1.705(B) OF THE PATENT TERM ADJUSTMENT DETERMINATION INDICATED IN THE NOTICE OF ALLOWANCE," filed May 5, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from three hundred fifty-six (356) days to four hundred two (402) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **four hundred two (402)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 26, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is three hundred fifty-six (356) days. On May 5,

2004, applicants timely¹ submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is four hundred two (402) days.

Applicants assert entitlement to a patent term adjustment of four hundred two (402) days on the basis that the PTO improperly assessed PTO delay of three hundred ninety-six (396) days due to an interference proceeding pursuant to 37 CFR 1.703(c)(2). Applicants state that the PTO delay should have been assessed at four hundred forty-two (442) days.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of three hundred fifty-six (356) days based on an adjustment for PTO delay of five (5) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), and three hundred ninety-six (396) days pursuant to 35 U.S.C. 154(b)(1)(C)(i) and 37 C.F.R. 1.703(c)(2), reduced by applicants' delays of forty-three (43) days and two (2) days, both pursuant to 35 U.S.C. 154(b)(2)(C)(iii) and 37 C.F.R. § 1.704(b). The PTO delay of 5 days and applicants' delays of 43 and 2 days have been reviewed and found to be correct. The adjustment of 396 days is at issue.

The adjustment of 396 days has been found to be incorrect. The application file reveals that the Office mailed a notice suspending prosecution on July 15, 2002. The next Office action was not mailed until September 30, 2003. Accordingly, pursuant to 37 C.F.R. § 1.703(c)(2), PTO delay should have been assessed as 442 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **four hundred two (402) days** (447 (442 + 5) days of PTO delay, reduced by 45 (43 + 2) days of applicant delay).

The \$200.00 fee set forth in 37 C.F.R. § 1.18(e) has been charged to Deposit Account No. 09-0089, as authorized.

The instant patent will issue more than 3 years after the filing date of the application, October 13, 2000. Applicants are advised that any days of delay which overlap with (are not in excess of) the 402 days of patent term adjustment already

¹ PALM records indicate that the issue fee was paid on June 21, 2004.

accorded will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A) and 37 CFR 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004). However, applicants are still eligible for PTA pursuant to 37 C.F.R. § 1.703(a)(6).

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Karin A. Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen